

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ART-OPTIC, LTD.,

Plaintiff,

v.

SAMUEL TOMASHOVER,
MERYL TOMASHOVER, and
NEWLIGHT EYEWEAR, LLC,

Defendants.
-----X

08 CV 0327 (MGC)(KNF)

**DECLARATION OF
SHIRA Y. ROSENFELD**

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

SHIRA Y. ROSENFELD makes the following statements under penalty of perjury:

1. I am an attorney admitted to practice in the State of New York and in the United States District of the Southern District of New York. I am counsel to plaintiff Art-Optic, Ltd. ("Art-Optic") and make this affidavit in support of its motion for a preliminary injunction, seizure, impoundment and destruction of Defendants' infringing copies and reproduction equipment pursuant to 17 U.S.C. § 503, expedited discovery order and asset restraining order. I make this declaration based on my personal knowledge and review of the relevant documents.

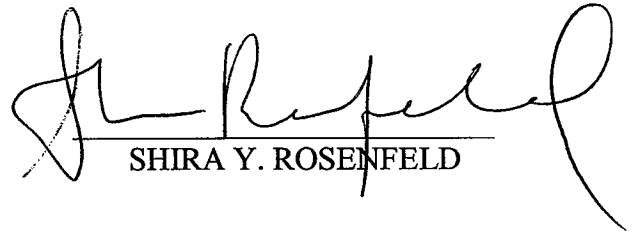
2. On June 8, 2007, the Tomashovers incorporated "Newlight Eyewear L.L.C." in New York with their home address as the address of the company. The corporate information for Newlight Eyewear, L.L.C. from the New York State Department of State, Division of Corporations is annexed hereto as Exhibit 1.

3. On or about April 30, 2007, S. Tomashover applied for a trademark registration for the mark RONIT FURST (Serial No. 77169467). According to the application posted on the

United States Patent and Trademark Office website, S. Tomashover listed himself as the owner.

The trademark application and the following documents from the U.S. Trademark and Patent office: (1) August 14, 2007 notice, (2) office action, (3) TARR system status info and (4) Trademark Electronic Search System printout are annexed hereto as Exhibit 2.

Dated: New York, New York
January 16, 2008



SHIRA Y. ROSENFELD

EXHIBIT 1

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: NEWLIGHT EYEWEAR L.L.C.

Selected Entity Status Information

Current Entity Name: NEWLIGHT EYEWEAR L.L.C.

Initial DOS Filing Date: JUNE 08, 2007

County: NEW YORK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

NEWLIGHT EYEWEAR L.L.C.

444 EAST 75TH ST.

SUITE 17C

NEW YORK, NEW YORK, 10021

Registered Agent

NONE

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#)

[New Search](#)

[Division of Corporations, State Records and UCC Home Page](#) [NYS Department of State Home Page](#)

EXHIBIT 2

Document Description: **Application** Mail / Create Date: **30-Apr-2007**

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PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77169467

Filing Date: 04/30/2007

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77169467
MARK INFORMATION	
*MARK	\\TICRS2\EXPORT12\771\694 \77169467 xml1\APP0002.JP G
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	RONIT FURST
COLOR MARK	NO
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of BLACK AND WHITE.
PIXEL COUNT ACCEPTABLE	NO
PIXEL COUNT	1700 x 2224
APPLICANT INFORMATION	
*OWNER OF MARK	Samuel Tomashover
*STREET	444 east 75th street
INTERNAL ADDRESS	suite 17c
*CITY	new york
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE	10021

(Required for U.S. applicants only)	
PHONE	212-288-5827
FAX	212-288-5827
EMAIL ADDRESS	greeneyes_76@hotmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
FIRST USE IN COMMERCE DATE	At least as early as 11/01/2004
DESCRIPTION	Optical frames
FILING BASIS	SECTION 1(a)
FIRST USE IN COMMERCE DATE	At least as early as 11/01/2004
SPECIMEN FILE NAME(S)	\\TICRS2\EXPORT12\771\694\77169467\xml1\APP0003.JP G
SPECIMEN DESCRIPTION	HAND PAINTED OPTICAL FRAME
DESCRIPTION	Frames for spectacles and sunglasses
FILING BASIS	SECTION 1(a)
FIRST USE IN COMMERCE DATE	At least as early as 11/01/2004
SPECIMEN FILE NAME(S)	\\TICRS2\EXPORT12\771\694\77169467\xml1\APP0003.JP G
SPECIMEN DESCRIPTION	HAND PAINTED OPTICAL FRAME
CORRESPONDENCE INFORMATION	
NAME	Samuel Tomashover
STREET	444 east 75th street
INTERNAL ADDRESS	suite 17c
CITY	new york
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10021

PHONE	212-288-5827
FAX	212-288-5827
EMAIL ADDRESS	greeneyes_76@hotmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
TOTAL FEE DUE	325
SIGNATURE INFORMATION	
SIGNATURE	NOT PROVIDED
SIGNATORY'S NAME	NOT PROVIDED
SIGNATORY'S POSITION	NOT PROVIDED
DATE SIGNED	NOT PROVIDED
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Apr 30 20:22:50 EDT 2007
TEAS STAMP	USPTO/BAS-66.108.235.210- 20070430202250510600-7716 9467-3702e2ba3c76e2efa724 13eefa37dece59a-CC-938-20 070430192722726524

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77169467

Filing Date: 04/30/2007

To the Commissioner for Trademarks:

MARK: RONIT FURST (stylized and/or with design, see mark)

The literal element of the mark consists of RONIT FURST. The applicant is not claiming color as a feature of the mark. The mark consists of BLACK AND WHITE.

The applicant, Samuel Tomashover, a citizen of United States, having an address of suite 17c, 444 east 75th street, new york, New York, United States, 10021, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 009: Optical frames; Frames for spectacles and sunglasses

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

Correspondence Information: Samuel Tomashover
suite 17c
444 east 75th street
new york, New York 10021

212-288-5827(phone)
212-288-5827(fax)
greeneyes_76@hotmail.com (authorized)

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

RAM Sale Number: 938
RAM Accounting Date: 05/01/2007

Serial Number: 77169467
Internet Transmission Date: Mon Apr 30 20:22:50 EDT 2007
TEAS Stamp: USPTO/BAS-66.108.235.210-200704302022505
10600-77169467-3702e2ba3c76e2efa72413eef
a37dece59a-CC-938-20070430192722726524

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NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

RONIT FÜRST

Document Description: **Offc Action Outgoing** Mail / Create Date: **14-Aug-2007**

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You are currently on page **2** of **2**



To: Samuel Tomashover (greeneyes_76@hotmail.com)
Subject: TRADEMARK APPLICATION NO. 77169467 - RONIT FURST - N/A
Sent: 8/14/2007 6:43:07 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

IMPORTANT NOTICE

USPTO OFFICE ACTION HAS ISSUED ON 8/14/2007 FOR APPLICATION SERIAL NO. 77169467

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77169467&doc_type=OOA&mail_date=20070814 (or copy and paste this URL into the address field of your browser), or visit <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to access the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from **8/14/2007**.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**

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NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

Document Description: **Offc Action Outgoing** Mail / Create Date: **14-Aug-2007**

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To: Samuel Tomashover (greeneyes_76@hotmail.com)
Subject: TRADEMARK APPLICATION NO. 77169467 - RONIT FURST - N/A
Sent: 8/14/2007 6:43:05 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/169467

MARK: RONIT FURST

77169467

CORRESPONDENT ADDRESS:

SAMUEL TOMASHOVER
444 E 75TH ST APT 17C
NEW YORK, NY 10021-3457

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Samuel Tomashover

CORRESPONDENT'S

REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

greeneyes_76@hotmail.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 8/14/2007

The assigned examining attorney has reviewed the referenced application and determined the following.

SEARCH RESULTS

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02. However, before the mark can be published, the applicant must address the following.

NAME IN MARK

Applicant must clarify whether the name in the mark identifies a particular living individual.

If the name in the mark identifies a particular living individual, then applicant must submit the following:

- (1) a signed, written consent from that individual, authorizing applicant to register the name as a trademark with the USPTO; and
- (2) a statement that "RONIT FURST identifies a living individual whose consent is of record."

However, if the name in the mark does not identify a living individual, then applicant must submit a statement that "RONIT FURST does not identify a living individual." Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §§813 and 1206.

SPECIMEN

The specimen is not acceptable because it is merely a picture or rendering of the applied-for mark and does not show the applied-for mark in actual use in commerce on the goods or packaging for the goods. Section 45 of the Trademark Act requires use "on the goods or their containers or the displays associated therewith or on tags or labels affixed thereto." 15 U.S.C. §1127; *see* 37 C.F.R. §2.56(b)(1).

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051 and 1127; 37 C.F.R. §2.34(a)(1)(iv).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for the goods specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"The substitute specimen was in use in commerce at least as early as the filing date of the application."** 37 C.F.R. §2.59(a); TMEP §904.09. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c).

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the goods or packaging, or displays associated with the goods at their point of sale. TMEP §904.04 *et seq.*

If applicant cannot satisfy the above requirements, applicant may amend the Section 1(a) filing basis (use in commerce) to Section 1(b) (intent to use basis), for which no specimen is required. However, should applicant amend the basis to Section 1(b), registration cannot be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. 15 U.S.C. §1051(c); 37 C.F.R. §§2.76, 2.88; TMEP Chapter 1100.

In order to amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.”** 15 U.S.C. §1051(b); 37 C.F.R. §§2.34(a)(2) and 2.35(b)(1); TMEP §806.03(c).

Pending a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. 15 U.S.C. §§1051 and 1127; 37 C.F.R. §§2.34(a)(1)(iv) and 2.56.

DRAWING

The record suggests that the background design is the actual eyeglass frame and is not part of the mark. Therefore, applicant must submit a new drawing with the background design deleted since it does not appear to be part of the mark. TMEP §§807.02 and 807.14(a).

To submit a special-form drawing electronically via the Trademark Electronic Application System (TEAS), applicant must attach a digitized image of the mark to the communication. The requirements for an electronically submitted special-form drawing are as follows:

- The digitized image must be in JPG format, formatted at no less than 300 dots per inch and no more than 350 dots per inch.
- The Office recommends that the digitized image of the mark have a length and width of no smaller than 250 pixels and no larger than 944 pixels.
- The drawing must appear in black and white if color is not claimed as a feature of the mark, or in color if color is claimed as a feature of the mark.
- All lines in the image must be clean, sharp and solid, and not fine or crowded, and produce a high-quality image when copied.

37 C.F.R. §§2.52(b) and 2.53(c); TMEP §§807.04 *et seq* and 807.05(c).

DESCRIPTION OF MARK

Applicant’s description of the mark will not be printed on any registration that may issue from this application since it is actually a statement regarding color rather than a necessary description of the mark. TMEP §808.03. TMEP §§808.01(a) and 808.01(b).

DECLARATION

The application was not signed and verified, which are application requirements. 15 U.S.C. §§1051 (a)-(b), 1126(d)-(e), 1141f(a); 37 C.F.R. §§2.33-2.34. Therefore, applicant must submit, in a signed affidavit or declaration under 37 C.F.R. §2.20, the following statement: **“The mark is in use in commerce and was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date, and the facts set forth in the application are true and correct.”** TMEP §804.02.

If applicant responds to this Office action via TEAS, applicant may satisfy this requirement by

adding the required statement (specified immediately above) to the TEAS response form, checking the box for a "signed declaration," and properly signing the form by either (1) choosing an electronic signature consisting of any combination of letters, numbers, spaces and/or punctuation marks, preceded and followed by the forward slash (/) symbol (e.g., /johndoe/), and entering this in the signature block on the response form, or (2) attaching a JPG or PDF image of a declaration under 37 C.F.R. §2.20 (see declaration paragraph below) together with a pen-and-ink signature. 37 C.F.R. §2.193(c)(1)(iii); TMEP §804.05.

If applicant responds to this Office action on paper, via regular mail, applicant may satisfy this requirement by providing the following declaration at the end of the response, properly signed and dated:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; *that the mark is in use in commerce and was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date; that the facts set forth in the application are true and correct;* that to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Midge F. Butler/
Trademark Attorney
Law Office 107
571-272-9137
fax (571) 273-9107

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office Action should be filed using the Office's

Response to Office action form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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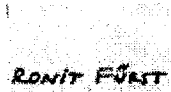
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Serial Number: 77169467 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



(words only): RONIT FURST

Standard Character claim: No

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2007-08-14

Filing Date: 2007-04-30

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 107

Attorney Assigned:
BUTLER MIDGE FAE Employee Location

Current Location: L7X -TMEG Law Office 107 - Examining Attorney Assigned

Date In Location: 2007-08-14

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Samuel Tomashover

Address:

Samuel Tomashover
suite 17c 444 east 75th street
new york, NY 10021
United States

Legal Entity Type: Individual
Country of Citizenship: United States
Phone Number: 212-288-5827
Fax Number: 212-288-5827

GOODS AND/OR SERVICES

International Class: 009
Class Status: Active
Optical frames; Frames for spectacles and sunglasses
Basis: 1(a)
First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: 2004-11-01

ADDITIONAL INFORMATION

Description of Mark: The mark consists of BLACK AND WHITE.

Design Search Code(s):

25.03.01 - Checker board pattern; Checkerboard patterns
26.11.21 - Rectangles that are completely or partially shaded
26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
26.17.06 - Bands, diagonal; Bars, diagonal; Diagonal line(s), band(s) or bar(s); Lines, diagonal

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-08-14 - Notification Of Non-Final Action E-Mailed

2007-08-14 - Non-final action e-mailed

2007-08-14 - Non-Final Action Written

2007-08-13 - Assigned To Examiner

2007-05-04 - Notice Of Design Search Code And Pseudo Mark Mailed

2007-05-03 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

SAMUEL TOMASHOVER
444 E 75TH ST APT 17C
NEW YORK, NY 10021-3457
Phone Number: 212-288-5827
Fax Number: 212-288-5827



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Record 1 out of 1

[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark	RONIT FURST
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Optical frames; Frames for spectacles and sunglasses. FIRST USE IN COMMERCE: 20041101
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	25.03.01 - Checker board pattern; Checkerboard patterns 26.11.21 - Rectangles that are completely or partially shaded 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s) 26.17.06 - Bands, diagonal; Bars, diagonal; Diagonal line(s), band(s) or bar(s); Lines, diagonal
Serial Number	77169467
Filing Date	April 30, 2007
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Samuel Tomashover INDIVIDUAL UNITED STATES suite 17c 444 east 75th street new york NEW YORK 10021
Description of Mark	The mark consists of BLACK AND WHITE.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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